IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 7428 (MS) OF 2001

(Old No. 11821/83)

1. State of U.P.,
   through Collector, Garhwal.
2. U.P. Khadi & Village Industries Board,
   Through its Chief Executive Officer,
   Lucknow. .....Petitioner.

Versus

1. The District Judge, Pauri Garhwal.
2. Shiv Prasad Dobhal, 49 years, S/o late Sri Vishan Dutt Dobhal, R/o Deputy Dhara, Pauri Garhwal.

.....Respondents.

Dated: 23.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Ganesh Kandpal, Advocate for the petitioner and Sri Lokendra Dobhal, holding the brief of Sri Rajendra Dobhal, Advocate for the respondent no.2.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 24th August, 1983 (Annexure No. 2 to the writ petition). Further prayer has been made for a writ of mandamus commanding the respondent no. 1 not to proceed against the impugned order dated 24th August, 1983.

3. Briefly stated, a suit was filed by the plaintiff/respondent praying for the eviction of the defendant

and for recovery of rent to the extent of Rs. 1075.50 paisa and Rs. 500 towards water and house tax and further rent and damages at the rate of 100 p.m.

4. The Judge Small Cause Court has found that the provisions of U.P. Act No. 13 of 1972 are not applicable to the building in dispute. While deciding the issue no. 2 a finding was recorded that after receiving the notice dated 31st October, 1981, the tenant has not paid the rent and he has started paying the rent from 4th December, 1981 when in point of fact, the demand was made from 01.03.1981 and as such a finding was recorded that the tenant has defaulted in the payment of rent.

5. So far as the notice is concerned, Judge Small Causes Court has recorded the finding against the plaintiff. The plaintiff went in revision against the said order. The revisional Court has recorded a finding that in the written statement, nowhere it has been stated that the notice was bad on account of the fact that it was not addressed to the Secretary of the Board.

6. The findings recorded by the Judge Small Cause Court that the notice has not been given to the Officer authorized is wholly without jurisdiction inasmuch as once the notice has been given to the Board and the same has been served, there was no error on the part of the landlord and as such the revisional Court has rightly allowed the revision.

7. Since the tenant has not disputed the arrears of rent and the case is fully covered under Section 20(2) (a) of the U.P. Act No. 13 of 1972 as he was in arrears of more than four months, I do not find any reason to interfere with the findings

recorded by the trial Court as well as the revisional Court so far as the arrears of rent is concerned.

8. In ***Ram Chand v. IV Addl. District Judge, Aligarh 2005 All. L.J. 2297,*** it has been held as under:-

"7. Order 27, C.P.C. deals with suit by or against he Government or its officers in their official capacity. By U.P. Act No. 57 of 1976 the words "or statutory authorities etc." have been added in the marginal heading of Order 27. Under Order 27, Rule 2, C.P.C. it is provided that persons being ex-officio or otherwise authorized to act for the Government in respect of any judicial proceedings shall be deemed to be the recognized agent by whom appearances acts and application under the code may be made or done on behalf of the Government. In view of these provisions for the purposes of the suit for eviction from tenanted building in which school is being run and service of notice of termination of tenancy in respect thereof termination of tenancy in respect thereof Basic Shiksha Adhikari of the district where building is situate acts as recognized agent of Basic Shiksha Parishad. Service of notice of termination of tenancy upon Baisc Shiksha Adhikari was sufficient and in the suit also Basic Shiksha Parisahad righly sued through Basic Shiksha Adhikari. Under Order 27, Rule 1, C.P.C. Basic Shiksha Adhikari was authorized to sign the written statement on behalf of Basic Shiksha Parishad and he in fact signed the written statement on his own behalf and on behalf of Basic Shiksha Parishad. Basic Shiksha Parisahd filed revision through Basic Shiksha Adhikari. In view of this, findings of lower revisional Court that notice to Basic Shiksha Parishad could not be served through Basic Shiksha Adhikari and Basic Shiksha Adhikari could not represent Basic Shjika Parishad in the suit are erroneous in law and liable to be set aside.

Learned counsel for petitioner has cited a Supreme Court authority reported in R.D.P. Singh v. Director, S.I.S.I., 1980 All rent Cases 365 : (1980 All LJ 943) and an authority by this High Court reported in L.I.C. v. D.J., (1983) 2 All Rent Cas 169. These authorities fully support the view which I have taken."

9. In view of the aforesaid, the writ petition deserves to be dismissed. However, counsel for the petitioner/tenant has sought time to vacate the premises. Petitioner is permitted to vacate the premises by 31st December, 2006 on the following conditions:-

(a) he furnishes undertaking by or before 15th September, 2006 to vacate the premises by or before 31st December, 2006.

(b) He pays entire arrears of rent by 15th September, 2006.

(c) He pays the damages for use and occupation in the first week of every month.

On failure of the aforesaid conditions, no relief shall be available with petitioner/tenant and the respondent/landlord shall proceed forthwith to evict the petitioner from the premises in dispute.

9. Writ petition is dismissed along with all the pending applications. No order as to costs.

(Rajesh Tandon, J.)

23.08.2006
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